IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10474 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SAVITABEN MADHUKAR KESHAVRAO GAYAKWAD

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR HH PATEL AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/2001

ORAL JUDGEMENT

#. Request made by the counsel for the respondent for grant of time to file reply to the Special Civil Application is declined. This matter is squarely covered by the decision of this court being Special Civil Application No.10611 of 2000 decided on 23.1.2001 both on

thepoint of adjournment and costs.

#. The petitioner was detained as a bootlegger under the order of the Commissioner of Police, Vadodara dated 6.9.2000 and he is presently at Ahmedabad Central Prison, Ahmedabad.

#. Challenging the this order manifold contentions are raised by the learned counsel for the petitioner but as this petition deserves to be allowed only on one ground it is not necessary to refer all those contentions, discuss and decide.

#. It is not in dispute that none of the respondents has filed reply to the Special Civil Application.

#. The petitioner made grievances in paras 10, 12 and 13 of Special Civil Application, which are as under :-

> The petitioner says and submits that statements of 3 witnesses are recorded by the Makarpura Police Inspector on 21.8.2000, 22.8.2000 and 23.8.2000 and all the statements are verified by the detaining authority on 5.9.2000 and order passed on 6.9.2000 and therefore there is no time gap between verification of the statements and order of detention and therefore there is total non application of mind on the part of detaining authority and claim privilege under section 9(2) of the PASA Act is not genuine. Hence, his continued detention become illegal.
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> The petitioner says and submits that her Advocate has made representation to the Home Minister by R.P.A.D. on 19.9.2000 which is received by the Officer of the Home Minister on 20.9.2000 but till today, she or her advocate has not received any reply from the State Government and therefore there is a delay in considered her representation. Hence, order is requires to be set aside by this Hon'ble Court.
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> The petitioner further says and submits that by way of representation dated 19.9.2000 her Advocate has demanded statements of witnesses which are recorded under section 161 of Cr.P.C. and proposal but till today the State Government has not supplied all the documents and therefore she could not make effective representation to the authority. so her right under Articles 22(5) of the Constitution of India is violated. Hence,

her continued detention become illegal"

#. Reply to the special civil application has not been filed by any of the respondents and as such the factual averments made by the petitioner in the special civil application stand uncontroverted. It is a clear case where there is no time gap between verification of statements of the privileged witnesses and order of detention and it is a case of total non application of mind on the part of the detaining authority to claim privileged under Section 9(2) of the Act. The petitioner made representation to the Home Minister but the same has not been decided. This is another ground on which the continued detention of the petitioner is wholly illegal. Lastly copies of statements of witnesses recorded under section 161 of Cr.P.C. have not been supplied to the petitioner by the detaining authority.

#. It is a clear case where the petitioner has been denied of his valuable right to make effective representation against the detention order as guaranteed under Article 22(5) of the Constitution of India.

In the result, this petition succeeds and the same is allowed. The order of detention of the petitioner dated 6.9.2000 is quashed and set aside. The petitioner Savitaben Madhukar Keshavrao Gayakwad, the detinue , at present in Ahmedabad Central Jail, Ahmedabad be set at liberty forthwith, if he is not required in any other case. Rule is made absolute. The respondent State of Gujarat is directed to pay Rs.15,000/= as the costs of this petition to the petitioner.

#. The learned counsel for the respondent strongly opposed awarding of the cost of this litigation to the petitioner by the court. Firstly it is the discretion of the court to award the costs. So, there is a little scope for raising such objection by the learned counsel for the respondent. Otherwise also I consider it to be a fit case to award the costs. The learned counsel for the petitioner made a statement on being put by the court that he has charged Rs.15,000/= as a fees from the petitioner to provide her her professional services in this case and this amount has been paid by the petitioner to her. It is the question of the personal liberty and the petitioner is free to engage any advocate of his own choice. Nobody can compel the petitioner nor any law which required that he has to engage an advocate who charges lesser fees. The advocate is a professional and if any body approaches to him to provide his professional

services he can charge his own fees. This may not be only amount which has been spent by the petitioner but in addition to this he would have spent money for typing charges, court fees and other misc. expenses of filing of the petition but the counsel for the petitioner has not produced bill of these expenses and as such no amount can be awarded to the petitioner under these heads.

#. The State of Gujarat an impersonal machinery is not at fault in the matter. Its only fault is that it may not have control over its officers or it has not taken its officers to the task for their negligence, recklessness, carelessness and unmindful of the duties which they owe to the people. Because of this negligence, recklessness, carelessness and unmindful of the duty of the concerned officer the reply to the Special Civil Application has not been filed. Whatever the amount comes from the exchequer it is a peoples' money. This money has to be paid to the petitioner by the State of Gujarat for not of its fault but for the negligence, carelessness, reckless and unmindful of duty of its officers concerned in this matter. The State of Gujarat through the Chief Secretary is directed to hold an inquiry in the matter and whosoever is found responsible for not filing the reply in the matter in the inquiry this amount of the cost is to be recovered from him. This inquiry is to be completed within a period of six months from the date of the receipt of the writ of this order. Compliance of the order be reported to this court by the Chief Secretary. Unless it is scrupulously done and the officers who are found negligent, careless and unmindful in discharging of their duties as a result of which the State of Gujarat has to suffer monetary losses and that amount is recovered from them its House may not be corrected.

(S.K.Keshote, J.)

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